

## § 611.1255

## 12 CFR Ch. VI (1–1–11 Edition)

the information statement, the final exit fee calculation, and the calculations of the value of equities held by dissenting stockholders, Farm Credit institutions that choose to have their equities retired at termination, and reaffiliating associations.

[67 FR 17909, Apr. 12, 2002, as amended at 71 FR 76118, Dec. 20, 2006]

### § 611.1255 Exit fee calculation.

(a) *Final exit fee calculation—terminating association.* Calculate the final exit fee in the following order:

(1) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (a)(4)(ii) and (iii) of this section.

(2) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as “dollar amount.”

(3) Compute the average daily balances based on financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant.

(4) Make adjustments to assets and liabilities as follows:

(i) Add back expenses related to the termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization. Do not add back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(ii) Subtract from assets the dollar amount of current and deferred tax expenses, if any, due to the termination.

(iii) Add to assets the dollar amount of current and deferred tax benefits, if any, due to the termination.

(iv) Subtract from liabilities any liability that we treat as regulatory capital under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(v) Make the adjustments that we require under § 611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(5) After making these adjustments to assets and liabilities, subtract liabilities from assets. This is your total capital for purposes of termination.

(6) Multiply assets by 6 percent, and subtract this amount from total capital. This is your final exit fee.

(b) *Final exit fee calculation—terminating bank.*

(1) The individual exit fees of affiliated associations that are terminating with you must be calculated as described in paragraph (a) of this section.

(2) Base your exit fee calculation on the average daily balances of assets and liabilities for the 12-month period preceding the termination date. Assume for this calculation that you have not paid or accrued the items described in paragraph (b)(5)(iii)(B) and (b)(5)(iv) of this section.

(3) Any amounts we refer to in this section are average daily balances unless we specify that they are not. Amounts that are not average daily balances will be referred to as “dollar amount.”

(4) Compute the average daily balances based on bank-only financial statements that comply with GAAP. The financial statements, as of the termination date, must be independently audited by a qualified public accountant.

(5) Make adjustments to assets and liabilities as follows:

(i) Add back the following to your assets:

(A) Expenses you have incurred related to termination. Related expenses include, but are not limited to, legal services, accounting services, tax services, studies, auditing, business planning, payments of severance and special retirements, equity holder meetings, and application fees for the termination and reorganization. Do not add

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back to assets expenses related to a requirement by the FCA to engage independent experts to conduct assessments, analyses, or studies, or to request rulings that solely address the impact of the termination on the System or parties other than the terminating institution and its stockholders.

(B) Any specific allowance for losses, and a pro rata share of any general allowance for losses, on direct loans to associations that are paid off or transferred before or at termination.

(ii) Subtract from your assets and liabilities your direct loans to affiliated associations that were paid off or transferred in the 12-month period before termination or at termination.

(iii) Subtract from your assets the following:

(A) Equity investments held in your institution by affiliated associations that you transferred at termination or during the 12 months before termination; and

(B) The dollar amount of current and deferred tax expenses, if any, due to the termination;

(iv) Add to assets, the dollar amount of estimated current and deferred tax benefits, if any, due to the termination.

(v) Subtract from liabilities any liability that we treat as regulatory capital (or that we do not treat as a liability) under the capital or collateral requirements in subparts H and K of part 615 of this chapter.

(vi) Make the adjustments that we require under §611.1250(c). For the final exit fee, we will review and may require additional adjustments for transactions between the date you adopted the termination resolution and the termination date.

(6) After the above adjustments, combine your balance sheet with the balance sheets of terminating associations after making the adjustments required in paragraph (a) of this section.

(7) Subtract combined liabilities from combined assets. This is the total capital of the combined balance sheet.

(8) Multiply the assets of the combined balance sheet after the above adjustments by 6 percent. Subtract this amount from the total capital of the combined balance sheet. This amount is the combined final exit fee for your

institution and the terminating affiliated associations.

(9) Your final exit fee is the amount by which the combined final exit fee exceeds the total of the individual final exit fees of your affiliated terminating associations.

(c) *Payment of exit fee.* On the termination date, you must:

(1) Deposit into an escrow account acceptable to us and the FCSIC an amount equal to 110 percent of the preliminary exit fee estimate, adjusted to account for stock retirements to dissenting stockholders and Farm Credit institutions, and any other adjustments we require.

(2) Deposit into an escrow account acceptable to us an amount equal to 110 percent of the equity you must retire for dissenting stockholders and System institutions holding stock that would be entitled to a share of the remaining assets in a liquidation.

(d) *Pay-out of escrow.* Following the independent audit of the institution's account balances as of the termination date, we will determine the amount of the final exit fee and the amounts owed to stockholders to retire their equities. We will then direct the escrow agent to:

(1) Pay the exit fee to the Farm Credit Insurance Fund;

(2) Pay the amounts owed to dissenting stockholders and Farm Credit institutions; and

(3) Return any remaining amounts to the successor institution.

(e) *Additional payment.* If the amount held in escrow is not enough to pay the amounts under paragraph (d)(1) and (d)(2) of this section, the successor institution must pay any remaining liability to the escrow agent for distribution to the appropriate parties. The termination application must include evidence that, after termination, the successor institution will pay any remaining amounts owed.

[67 FR 17909, Apr. 12, 2002, as amended at 71 FR 76118, Dec. 20, 2006]

### §611.1260 Payment of debts and assessments—terminating association.

(a) *General rule.* If your institution is a terminating association, you must pay or make adequate provision for the